IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28050 of 2007(L)

PETITIONER:

P.K.KAMALAKSHI, AGED 73 YEARS,
W/O. K.K.SIVANANDHAN, KOVATT HOUSE,
THATTAMPADI, KARUMALOOR P.O., PIN-683 511.

BY ADV. SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
ITS SECRETARY, MINISTRY OF LAW AND JUSTICE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY
ITS SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR,
ERNAKULAM.

4. TAHSILDAR,
MUVATTUPUZHA.

5. E.A.KUMARAN,
EDAKKUDIYIL HOUSE, NEAR S.N.SCHOOL,
MUVATTUPUZHA P.O., MUVATTUPUZHA.

BY ADV. SHRI.BEJOY CHANDRAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

WP(C) No. 28050 of 2007

Dated, this the 27th day of September, 2007

J U D G M E N T

Petitioner is the mother of one K.S.Aysha, who expired on 27/11/2006 while working as Confidential Assistant in the Munsiff Court, Muvattupuzha. Petitioner claims that she is the only legal heir of late K.S.Aysha as the petitioner's husband, i.e. late Aysha's father, has also passed away. She sought for the service benefits due and admissible in favour of late K.S.Aysha, which has not been disbursed to her. Apparently, 5th respondent raised a claim that he is also the legal heir of late K.S.Aysha on the ground that he was her husband. Ext.P5 certificate issued by the Tahsildar indicates that both the 5th respondent and the petitioner are treated as legal heirs.

2. Learned counsel for the petitioner contends that late K.S.Aysha was originally married to one Mr. K.P.Padmanabhan, but the said marriage was dissolved on 22/01/1990, as evidenced by Ext.P6 order of the Subordinate Judge, Manjeri in O.P. No. 33/1989. The petitioner says that late K.S.Aysha and the 5th respondent were not married thereafter, and 5th respondent's claim, that there was a marriage, is only for the purpose of receiving the benefits due and

admissible under the account of late K.S.Aysha.

3. What is involved is the status of the 5th respondent. In so far as the petitioner is concerned, obviously, she is one of the legal heirs of late K.S.Aysha. Question as to whether the 5th respondent is also a legal heir will depend upon, whether there was a valid marriage between late K.S.Aysha and the 5th respondent. This question, obviously, cannot be decided under Article 226 of the Constitution of India. In the circumstances, the appropriate remedy for the petitioner is to approach the civil court seeking a declaration as to the status of the 5th respondent. The petitioner will be constrained to move the civil court, in circumstances where the 5th respondent seems to have prima-facie proved that he is also one of the legal heirs of late K.S.Aysha, I do not express any opinion on the contentions raised by the petitioner in this regard. The writ petition is, therefore, dismissed without prejudice to the right of the petitioner to approach the civil court seeking appropriate declaration and relief.

(V.GIRI, JUDGE.)

jg